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REPORT OF THE EXPERT MEETING ON NATIONAL EXPERIENCES WITH REGULATION AND LIBERALIZATION: EXAMPLES IN THE CONSTRUCTION SERVICES SECTOR AND ITS CONTRIBUTION TO THE DEVELOPMENT OF DEVELOPING COUNTRIES

Held at the Palais des Nations, Geneva,
from 23 to 25 October 2000

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I. OUTCOME[1]

1. The Expert Meeting on National Experiences with Regulation and Liberalization: Examples in the Construction Services Sector and Its Contribution to the Development of Developing Countries was held in Geneva from 23 to 25 October 2000 upon the decision of member States taken at the consultations of the President of the Trade and Development Board on 31 March 2000 in accordance with paragraph 134 of UNCTAD X's Plan of Action as contained in document TD/386. The following is the outcome of the Expert Meeting. In accordance with the Trade and Development Board's decision taken at its twenty-fourth executive session, the outcome will be circulated by the secretariat to member States with a request for policy comments on the experts' recommendations. The responses of member States will be taken into account in the preparation of the secretariat documentation for the fifth session of the Commission on Trade in Goods and Services, and Commodities, to be held from 19 to 23 February 2001.

2. Individual experts put forward their views on how Governments of developing countries could play an active role at national level and in multilateral negotiations in order to promote development of their construction services sector. The following text summarizes their suggestions. It is intended to reflect the richness and diversity of the views expressed.

A. Domestic policy instruments and strategies aimed at building domestic capacities in the construction services sector

3. The construction services sector in developing countries is a fundamental economic activity which permeates all sectors of the economy. It is an instrument for employment creation, a key infrastructure service and a tool for upgrading welfare. It consists of two subsectors: architectural and engineering design services and physical construction services. This sector has a major role to play in achieving social and economic development objectives in developing countries; local firms and professionals should be fully involved in this process.

4. The development of a strong domestic construction services sector should be supported by instruments of industrial policy, human resource development and macroeconomic policies, and by removing unnecessary bureaucratic obstacles internally. Adequate funding for research and development is an essential component of such policies. Countries should ensure that macroeconomic policies, particularly fiscal policies, avoid onerous internal taxation of construction firms and high tariffs on essential equipment. The right policy mix can be achieved only if dialogue is maintained between all stakeholders in the private and public sectors of the economy.

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[1] As adopted by the Expert Meeting at its closing plenary meeting on 25 October 2000.

5. One element of policy is to stimulate the growth of domestic architectural, engineering, design and construction firms, as well as their technological capabilities, by improving their competitive position and ensuring their effective participation in construction linked to social programmes, e.g. housing, energy, industrial and infrastructure projects. Local companies need to follow a "learn by doing" approach. Once they have accumulated expertise and strengthened their competitiveness, these may be translated into export capacity. The development of the project management and design subsectors can provide a lead into foreign markets.

6. Another element is to seek to upgrade capacity through the establishment of local and regional professional associations and create a mechanism for the effective recognition of qualifications for professionals and firms, where they do not exist, based on progressive implementation of international standards. The policies and legislation to upgrade the capacity of the construction services sector should include provisions to encourage the transfer of technology to domestic firms through joint ventures and other forms of partnership with foreign firms, and various other forms of performance requirements, which are consistent with multilateral disciplines. Transnational firms from developed countries should be encouraged to enter into such partnerships.

7. Human resource development should be targeted at the training of highly skilled professionals, as well as other workers, in order to fulfil the requirements of the sector, with emphasis on the use of information technology. The private sector may contribute to training and upgrading of skills which are in short supply domestically and for which training is not provided in the established educational institutions. National and international measures are needed to discourage "brain drain".

8. All countries should establish appropriate institutional and legal frameworks to effectively monitor and regulate the construction services sector. Such frameworks should provide for transparency and effective recourse against anti-competitive practices, as well as providing an effective arbitration mechanism for settling disputes. The construction services sector can be used to generate indirect benefits, such as addressing rural poverty and opportunities for women.

9. The export capacity of developing countries requires the support of export promotion policies. These could include export financing aimed at the specific needs of the construction services sector, for example the financing of pre-investment services, as well as active participation in international negotiations aimed at the reduction and elimination of barriers.

10. National Governments should take the lead in building the capacity of the architectural and engineering and construction services, and should seek technical assistance from the international financial institutions and other international organizations geared towards those objectives.

B. Action in international trade negotiations

11. In participating in multilateral trade negotiations, developing countries should identify areas of trade liberalization according to their economic and social development goals. Negotiations should take into account the level of development of the developing countries, and special treatment should be accorded to the least developed countries in order to take account of the asymmetries due to the size of their markets, structural weaknesses of those markets and human capacities.

12. In the negotiations under the General Agreement on Trade in Services (GATS) countries should aim at effective implementation of Article IV of the GATS as it applies to the construction services sector. This article stresses that the increasing participation of developing countries in trade shall be facilitated through negotiating specific commitments which will: (i) strengthen the domestic capacity of their domestic service suppliers through access to technology on a commercial basis; (ii) improve their access to distribution channels and information networks; and (iii) liberalize market access in sectors and modes of supply of export interest to them. This provides the framework for developing countries to acquire knowledge and transfer of technology as a way to develop domestic capacities in the construction services sector. Any consideration of specific classifications or methodologies to be used as tools or aids for negotiations should ensure that the architecture of the GATS is not modified and should have as its objective the effective implementation of Article IV in the construction services sector.

13. The GATS negotiations should also address measures which impede the ability of developing country firms to compete in their own markets or those of other countries, including subsidies, tied aid, discriminatory qualification requirements and anti-competitive practices.

14. Developing country Governments should identify in a precise manner the need for new rules and the main trade barriers affecting their trade in the construction services sector, so as to seek their removal in the GATS negotiations, particularly those which impede the ability of their firms to penetrate developed countries' markets. These include restrictions on the temporary movement of personnel, discriminatory and non-transparent licensing and standards, non-recognition of professional qualifications, problems of access to networks for the supply of construction services, discriminatory government procurement practices against developing countries' construction services providers, subsidies and discriminatory tax policies. In all cases developing countries should define how the disciplines applicable to these restrictions will preserve special and most favourable treatment.

15. It was suggested that an Annex on Construction Services could be prepared in order to overcome the slow progress in the various subsidiary bodies of the WTO Council for Trade in Services working on additional disciplines for trade in services. The annex could consider the various subsectors of construction services, and could cover specific provisions of relevance to construction that would ensure compliance with Articles IV and XIX of the GATS in the areas listed in paragraph 14 above.

16. To implement effectively development objectives in the construction services sector, developing countries should make use of performance requirements which are GATS-consistent. In that respect, they may use local content requirement related to services, as well as requirements of associations and joint ventures, so as to include local companies in the design and implementation of construction projects, and should ensure that any commitments or rules that they accept permit the policy flexibility needed.

17. Developing countries should bear in mind that Article XIX of the GATS enables developing countries to seek commitments in the construction services sector, without symmetrical opening of their own country markets, as they are permitted to open fewer sectors and may offer reciprocal commitments or concessions in other sectors. Under this article, the process of liberalization must take into account national policy objectives and the level of development of developing countries, while market opening should correspond to the development situation in each market.

18. Trade among developing countries should be promoted in the construction services sector, including trade in related equipment, materials and the movement of qualified personnel. Preferential treatment within the framework of subregional agreements among developing countries can provide opportunities for developing country construction services firms, including through harmonized legislation.

19. Progressive trade liberalization may be promoted in those subsectors that contribute most to the development and achievement of social objectives, as in the case of housing.

20. The minimum requirement for the qualification of architects and engineers adopted by the International Union of Architects and other international professional associations and bodies may serve to promote work in the WTO in the area of mutual recognition of qualifications.

21. Efforts should be made to achieve mutual recognition of diplomas and curricula, especially between developed countries on the one hand and developing countries on the other, insofar as this is a precondition for developing country professionals to provide their services abroad. These goals can be easier to achieve in the framework of regional groupings. Mutual recognition of qualifications should not be limited to professionals but also include skilled personnel.

C. Action by international financial agencies and donors

22. International funding agencies should take positive measures to actively promote the participation of developing country firms in the design and execution of construction projects. Therefore, they should not impose requirements that developing country firms are by and large unable to meet.

23. Multilateral financial institutions and donor countries should support domestic policies aimed at developing national capacities, including through associations of firms, and provide all the required incentives through specific programmes related to the transfer of technology.

24. Transparency in bidding regulations should be implemented for multilaterally financed projects. Procedures should be put in place to ensure that the preferences and other conditions contained in the guidelines of financial institutions favouring domestic suppliers are made public and are applied in the recipient countries.

25. Flexibility in the rules of the multilateral financial institutions allowing non-mandatory performance requirements should be implemented effectively, particularly the introduction of evaluation criteria in international tendering which would favour a commitment to transfer of technology and voluntary association agreements between foreign and domestic firms in developing countries aimed at promoting learning-by-doing processes.

26. Harmonization of rules for procurement in order to enhance transparency and fairness in bidding procedures should take into account multilateral trade rules and specifically the outcome of negotiations on government procurement mandated under Article XIII of the GATS. Such harmonized rules should not affect the definition of national policies aimed at the development of various sectors.

D. Recommendations to UNCTAD

27. This Expert Meeting has been the first of its kind at the international level to focus on the needs of developing countries in the construction services sector. Both public and private actors working in the area of construction services have felt for years a need to address issues specific to construction services in a comprehensive manner, but no international organization has done this so far. A number of new issues which have also arisen in the area of international trade have a direct or potential impact on the evolution of the construction services sector at the national level, but awareness of them has been non-existent or minimal in most of the developing countries and also in some developed countries.

28. UNCTAD should promote the continuation of dialogue and awareness building in collaboration with other international and regional organizations and bodies in the area of construction services. In particular, a model law for promoting the development of an efficient and competitive construction services sector might be needed. UNCTAD should work with the United Nations Commission on International Trade Law (UNCITRAL) to assess the feasibility of drafting such a law. UNCTAD should also endeavour to include legislation and regulations affecting trade in construction services in its Measures Affecting Service Trade (MAST) information database.

29. UNCTAD should continue playing a role in supporting the participation of the developing countries in the area of multilateral trade negotiations by better defining available options in those negotiations and identifying barriers to trade in the construction services sector and possible conditionalities in order to enhance internal regulations and their effectiveness in achieving national policy objectives.

30. UNCTAD should organize a follow-up meeting in the area of construction services so that countries would have a forum for addressing their problems, exchanging new ideas and assessing how successful they were in addressing problems identified in previous meetings at national, regional and multilateral levels.

31. UNCTAD should organize workshops and seminars at the regional and national levels for the purpose of promoting contacts among policy makers, the private sector and trade negotiators. These meetings should involve representatives from the construction services sector. Professional associations and bodies in developing countries should also become involved in the UNCTAD programmes aimed at capacity building in services.

II. CHAIRPERSON'S SUMMARY

A. Presentations by experts on country experiences

32. Individual experts made presentations, in their own capacity, on experiences with regulation and liberalization in the construction services sector in the following countries: Bangladesh, Colombia, Cuba, Dominican Republic, Egypt, Ethiopia, Indonesia, Iraq, Japan, Lesotho, Mauritius, New Zealand, Pakistan, Paraguay, Romania, Samoa, Tunisia, Turkey, United Republic of Tanzania, Venezuela and Zimbabwe.

Experience of Bangladesh

33. The Government of Bangladesh has been pursuing a policy of promoting a competitive market-based economy through financial and industrial policy reforms, as well as trade liberalization. This is geared towards creating an enabling environment for the private sector in general. Major challenges faced by the Bangladesh construction sector in this context relate to how to improve the local technological capacity through technology transfer, enhance competition in the domestic market and improve the competitiveness of domestic industries through efficiency gains. The domestic construction services sector is subject to stringent legal controls, which are justified on social and developmental grounds since they are aimed at the protection of workers' rights, safety and health as well as the orderly development of the industry. Technical regulations establishing what types of materials, construction techniques and skills can be used in the construction process have resulted in the origin of their suppliers being ascertained. The import dependence of the Bangladesh construction industry as regards input materials explains the need for such regulations. Laws and regulations could usefully be further tailored to promote the wide-scale adoption of local materials, construction techniques and skills in order to foster the development of the domestic industry. With a view to strengthening the competitiveness of local industry, policies should aim at "slicing and packaging" larger construction projects so as to create opportunities for domestic contractors; limiting bidding to technically and financially capable suppliers; prohibiting in principle the pre-qualification of suppliers of goods or equipment; ensuring that technical specifications are not too prescriptive; ensuring that standards other than standards specifically stated in the bidding are recognized, provided that they ensure an equal or higher quality than the standards specifically mentioned; ensuring fair and equal opportunities for all bidders in the tendering process; and providing compensation for delays in payment in government-financed projects.

Experience of Colombia

34. The Government has been carrying out a programme aimed at strengthening the supply capacity of firms in the construction services sector and creating mechanisms to promote exports of construction services. With regard to the domestic demand for construction services, physical infrastructure projects in the areas of housing, health, education and transport predominate. Having accumulated expertise in all these areas, a

number of Colombian firms have penetrated markets in Central America and the Andean countries. In order to enhance firms' export capacity, the Government is providing potential exporters with information on market opportunities abroad, advisory services, training programmes, financial incentives and special credits at low interest rates to help them penetrate foreign markets. Harmonization of the fiscal system and the elimination of onerous taxes should be pursued domestically. There is a need to establish minimum international standards for construction work. Regulations concerning the movement of labour should be harmonized at regional and international levels in order to facilitate the movement of construction workers and professionals at all skill levels.

Experience of Cuba

35. The implementation of national policies for developing architectural and engineering services (AES) and construction services has three main priorities. The first is the strengthening and upgrading of AES firms' capacity so as to enhance their competitiveness in the national market and to help them acquire greater technological endowments, thus enabling them to benefit from supplying services to open markets abroad. National efforts are oriented towards implementation of a coherent and integrated policy framework to help national enterprises in the construction sector retain a greater share of value added, and to promote employment of national professionals. The participation of foreign firms in Cuba is conditional both on a high level of participation by national firms and on a substantial transfer of know-how. The second priority is to ensure that national companies and professional entities, as well as foreign companies operating in the country, meet the highest standards of quality and advanced technology. The third priority is to create a specialized institution responsible for monitoring and assessing the activities of AES firms, including establishment of a national register of firms and contractors, a register of professionals in the construction sector and implementation of new rules for bidding and tendering for construction projects. Lastly, there is a need to enhance the capacities of all actors in the national economy with regard to the General Agreement on Trade in Services (GATS) and other trade issues, including the compatibility of domestic regulations with the multilateral trade rules.

Experience of Dominican Republic

36. Construction in the Dominican Republic grew at the rate of 18 per cent in 1999 and represented 13.4 per cent of gross national product (GNP). Half of the latter figure was accounted for by government procurement of construction for infrastructure development. Regional trade in Central America and the Caribbean is also beginning to play an increasingly important role. However, the overall picture in developing countries indicates that they are only marginal suppliers of architectural and engineering services that provide the higher value added. The main trade barriers facing developing countries' exports in the area of architectural and engineering services include qualification procedures, licensing requirements, barriers to electronic provision of services, technical standards and subsidies. At the same time, restrictions on the movement of personnel, government procurement practices and subsidies are limiting exports of physical construction services from developing

countries. Ongoing and new negotiations on services are particularly relevant to construction services in respect of subsidies, government procurement and domestic regulation. The basic objective is to achieve a progressively higher level of liberalization, and to do so, developing countries should seek to deal more effectively with the regulatory problems that are distorting trade in construction services. Therefore, an Annex on Construction Services could consider specific provisions of relevance for construction that would ensure compliance with Articles IV and XIX of GATS in the following areas: subsidies, recognition of professional qualifications, barriers to movement of personnel, access to networks for cross-border supply of construction services, government procurement — including transparency, market access, national treatment and special and most favourable treatment for developing countries — and sectoral coverage.

Experience of Egypt

37. The construction and housing sector accounts for 5.8 per cent of total gross domestic product (GDP) in Egypt and has been growing at an annual rate of 10.5 per cent since 1998. Local enterprises control 70 per cent of the construction market, with the private sector as the major player, while the large foreign firms, which usually form a consortium with Egyptian partners, control the rest. Egyptian firms have benefited from work with foreign firms in obtaining technical know-how. Projects, which are delivered through bilateral assistance, continue to play an important role in upgrading infrastructure. A strong demand for construction services is expected to be maintained in Egypt, resulting from the construction of new plants for industrial development and new hotels for development of the tourism sector, the extension of infrastructure facilities for distribution of gas, and the building of new roads, railways and private airports. To maintain the competitiveness of Egyptian firms, the Government must increase investment in knowledge and technology relevant to supporting the development of the construction industry. Furthermore, firms must be encouraged to upgrade their capacities and emphasize innovation, managerial skills and the use of new technologies. One of the largest contracting firms in the Middle East — Osman A. Osman & Co. — has been successful in carrying out those tasks and has seen its turnover increase by US$ 1 billion on a yearly basis. It has diversified in terms of services and markets and currently has 30 branches in Africa, Asia and Europe.

Experience of Ethiopia

38. Developing countries are confronted with high population growth, rapid urbanization and poor housing and living conditions. These factors have generated a demand for urban development and the creation of infrastructure, which despite the positive multiplier effect on the economy have proceeded at a slow pace and have been unable to meet existing needs. As a result, financially feasible and technically sound housing programmes, interlinked with the provision of infrastructure, have become very important to Ethiopia, and have had to be supported by clearly formulated policies and legal framework regulations giving more power to local governments. In the area of road development, both the maintenance and the upgrading of roads to expand the network are important. Foreign firms' contribution to capacity building in local construction services is positive since they subcontract local

contractors and engage local consultants. Foreign participation in the construction sector is considerable, especially in the implementation of development-oriented projects. Regional governments are focusing on the implementation of programmes related to social services, e.g. building of schools or medical facilities. Large-scale construction projects are beyond the scope of local firms, and limiting foreign companies' market access would delay project implementation. The lack of skilled and experienced professionals, and the knowledge and skills deficiency of staff, are the key factors hampering the performance of local firms in the construction sector. The skills shortage, which is a major problem, can be overcome in the short term only by securing the necessary professional services from abroad. In the longer term, training programmes should be developed and aimed at filling the gap between available and necessary skills.

Experience of Indonesia

39. The rapid development of the construction services industry has continued in Indonesia since 1968, leading, to some extent, to non-conformity with established standards for construction work. To address these weaknesses, the Government has had to introduce a number of required standards and regulations and to adopt a new Construction Law. The need to review the existing procurement system for consulting and contracting became apparent because of its inefficiencies and in preparing for the liberalization of market access in 2002 under the ASEAN Free Trade Area. The local market has been dominated mostly by government projects for development of public infrastructure. International financial agencies have supported the development of infrastructure, which has involved the participation of foreign construction firms in implementation of the projects, thus leaving for local firms small contracts based on low-level technology. As a consequence, the growth of domestic industry capacities has been progressing inadequately. The construction industry was a major employer until 1997, accounting for 10.23 per cent of total workforce employment; however, as a result of the economic crisis, that figure fell to 6.78 per cent in 1999. At the same time, companies operating in the construction services sector were faced with shortages of skilled manpower, a lack of capital and equipment supply for smaller contractors, and inadequate managerial skills. The further growth of the industry had to be supported by the removal of internal domestic constraints, including inefficiency in related services sectors, and excessive government bureaucracy. The growth of the construction services sector in developing countries could create new export opportunities for them, since they could become competitive suppliers of cost-efficient construction services. Developing country firms need a transition period of five to ten years in order to prepare for international competition. Cooperation based on an equal partnership between developed and developing countries may speed up the transition process. However, financial assistance and training of human capacities must be provided by developed countries and by international financial institutions. In order to support the development of developing country firms' capacities, fair competition in the international markets for construction services should be maintained.

Experience of Iraq

40. In the aftermath of war, Iraq was faced with the need for reconstruction of its social and industrial infrastructure. This need for reconstruction extended to power plants, bridges, oil refineries, telecommunications, ports, various other industrial installations and housing. For this purpose, a National Committee involving all ministries was created and a priority list of services and sites for rehabilitation was prepared. Access to resources was limited to locally available ones, including technical support. International companies were important players in the construction services sector in Iraq, as there were only 15 state construction companies, all of which were small or medium-sized and had to rely on subsidies and government financing of projects. These companies became involved in reconstruction projects that were not commensurate with their size and capacities, and consequently there was a need to increase their size, number and efficiency. Private sector contractors were subcontracted for the delivery of specific services. Laws and regulations have also changed to accommodate the changes in the market.

Experience of Japan

41. The construction sector has played an important role in Japan's development and still accounts for nearly 15 per cent of GDP. Experience acquired in building domestic capacities in this sector, particularly after the Second World War, may be usefully applied to addressing the problems of developing the construction services sector in developing countries. Japanese contractors operate in many developing countries and subcontract part of their work to local firms, thus contributing to technology transfer and human resource development. The liberalization of the construction services sector, within the framework of the World Trade Organization (WTO) negotiations, can contribute further to socio-economic development.

Experience of Lesotho

42. The Government of Lesotho, through the Ministry of Works and Transport, aims at formulating and monitoring the implementation of adequate, comprehensive and robust transport and construction sectors and supporting this by maintaining dynamic and effective institutional and legal frameworks. The construction sector contributes significantly to employment in the country, and the maintenance of public buildings accounts for a very large part of the demand for construction services. The development and maintenance of rural roads is undertaken mostly by domestic firms. The Lesotho Highlands Water Project has contributed to the development and use of specialized expertise in the construction of hydropower plants, tunnels and dams, water and sewage plants, roads, bridges, hotels and municipal works. The participation of domestic contractors in the execution of large-scale projects is very limited owing to a lack of qualified personnel to work on these projects, and they are usually carried out by foreign firms. In addition, most qualified personnel move to the neighbouring country — South Africa — because of Lesotho's small economy and limited opportunities. The Government is promoting and encouraging the involvement of women in the construction services sector.

Experience of Mauritius

43. Mauritius represents a small market for construction services driven by the private sector. Consequently, there are a number of subsectors in which local firms do not have expertise or experience, and they therefore need to cooperate with foreign firms. The joint ventures established with foreign partners have been especially beneficial to Mauritius. By cooperating with foreign suppliers, local firms have increased their expertise and are becoming suppliers of construction services abroad. In order to establish partnerships with foreign companies, local companies are strongly encouraged to comply with international standards related to professional qualifications. In addition, Mauritius is trying to comply with existing international standards and support development of new ones in such areas as registration, licensing and certification, procurement policies, liability and copyrights. To ensure that the presence of foreign professionals/firms is actually contributing to the knowledge and technological upgrading of local firms, the precondition for provision of services by foreign architects/engineers is collaboration with local professionals.

Experience of New Zealand

44. The construction sector is an important part of New Zealand's economy, accounting for 6.8 per cent of employment and contributing 3.5–4.0 per cent to GDP. Direct exports of construction services have reached NZ$ 100 million. New Zealand construction firms have worked offshore since the 1940s. Joint venture and project work continues to be an important component, especially in the Asia-Pacific region, which is the main focus for most of New Zealand's services trade. It is currently estimated that offshore work generates as much as 80 per cent of the turnover of New Zealand's largest construction companies. New Zealand has developed a specialization in the design of earthquake-resistant structures and hydro- and geothermal power stations, and the design and construction of dairy and meat facilities. Apart from two or three fairly large construction firms, most construction services suppliers are small and medium-sized enterprises. In looking at ways to improve access to foreign construction markets in the current round of services negotiations, the cluster approach may be used as a negotiating tool in bilateral market access negotiations. With regard to domestic regulation, meaningful access to markets for construction services requires that measures relating to qualification requirements for companies, as well as procedures, technical standards and licensing requirements, be effectively addressed. Building controls are set out in the New Zealand Building Code, which is a performance-based code that lays down minimum standards for design, construction and health and safety. On the question of recognition of qualifications, it will be necessary to explore further either establishment of international standards for professions or the pursuit of mutual recognition agreements. New Zealand has a mutual recognition agreement with Australia, which facilitates the movement of engineers and other construction personnel across the Tasman Sea.

Experience of Pakistan

45. In the mid-1970s Pakistan was able to export its construction services — both physical construction services and architectural and engineering services. However, the

situation has been deteriorating since then. The requirements in the guidelines of the international financing agencies and most developed countries have eroded the chances of local firms' participation in major development projects related to power-generating facilities and other infrastructure construction. Local firms are eliminated at the pre-qualification stage because they are unable to fulfil the criteria laid down by funding agencies and bilateral donor countries. Since local firms are not given the chance to participate in domestic construction projects, they are missing opportunities to develop and upgrade their technical expertise and, as a result, are increasingly unable to participate in construction projects abroad. The cost of projects executed by foreign services providers can be three to four times more than that of projects carried out by domestic services providers, thus creating a debt burden in Pakistan which is increasingly difficult to discharge. Therefore, the procurement guidelines adopted by the financial institutions and the developed countries have to be amended to ensure that the funds made available to implement construction projects truly benefit the receiving country in terms of human resources development, transfer of technology and poverty alleviation. More specifically, they have to contribute to the development of an efficient local construction sector which could gain from trade liberalization in obtaining a share of the regional and international markets. The establishment of joint ventures with local firms should be recognized as a precondition for foreign firms to operate in local markets, and countries must be free to include this requirement in their national legislation. This is because joint ventures are the best tool for local companies to upgrade their expertise and benefit from trade liberalization in the construction services sector. Local laws, policies and regulations should be complied with by all actors in the construction services field since their aim is promote the development of the local construction services sector. Developing countries have a competitive advantage in the sector because of their relatively cheaper labour and the availability of skilled professionals. Developed countries need to further liberalize the delivery of services through mode 4 of the GATS to enhance the movement of natural persons from developing countries as construction services providers.

Experience of Paraguay

46. The Government is implementing a broad programme of reforms which gives high priority to the reactivation and restructuring of the construction sector in order to overcome the shortage of housing, and to promote the building and maintenance of roads and sewage facilities. In this connection, major efforts are being made by the Government to promote greater participation by the private sector in the privatization process. One of the main problems faced by local firms in the domestic market is securing effective and substantive participation in projects funded by multilateral funding agencies since they have found it difficult to meet the pre-qualification requirements.

Experience of Romania

47. Romania's economic reform and trade liberalization have been dictated by the opening of the economy in the context of European integration. Despite the decline in investment in the construction industry during the period of economic transition and

privatization, the value of the output of the Romanian construction services sector increased between 1987 and 1997, while its contribution to GDP remains relatively low compared with the sector's counterparts in the countries of the European Union. During the last five years, Romania has undergone regulatory adjustment in order to apply internationally compatible regulations regarding the quality of construction work with a view to creating a competitive domestic market where quality criteria are dominant, and to promoting increased trade in construction services. With the introduction of a law on quality in the construction sector, a system of regulations was elaborated to establish a quality system for construction materials and products. Those regulations pertain to technical standards of products and procedures, consultancies dealing with design verification and technical assessment, quality management, research and laboratory tests. An official authorization system has also been implemented, which governs the qualification of firms on the basis of legal, technical and financial criteria, as well as certification of their professional capacity. These new regulations have contributed to the development of the sector, particularly in urban planning and development.

Experience of Samoa

48. Being a small island nation, Samoa faces developmental constraints because of its limited natural resources, small domestic market, limited scope for economies of scale and isolation from international markets. The Samoan market is an open one, and the Government's reform processes are encouraging the private sector to grow by removing the remaining obstacles to development. Samoa is in the process of accession to the WTO. In the construction services sector, reforms include reduction of government involvement in the provision and maintenance of infrastructure, introduction of environmental and social impact regulations, development of sensitive zone management plans and adoption of a rational method for management of infrastructure assets by government agencies. There are few regulations in the construction services sector, which is constrained by the size of the country. Liberalization has brought about competition and efficiency in the construction services sector. Joint ventures are encouraged for transfer of technology to local industries. Because of the small size of the economy, most Samoan firms cannot compete in the international market. The Government needs to improve the terms of procurement policies so as to introduce more transparency in allocating contracts. There is also a need to set up a regulatory and licensing procedure, and to design standards for the construction sector.

Experience of Tunisia

49. The Ministry of Economic Development carried out in 1996 a survey of 50 firms regarding architectural and engineering services. Tunisian firms have indicated a number of problems. First, local firms which work mainly with the public sector do not have sufficient human and technical resources. This jeopardizes the functionality of their projects. In addition, domestic regulations for public procurement are rather complex and rigid and do not always take into account the specificity of all the providers involved. Furthermore, competition is not always fair in the implementation of projects in Tunisia. This is due to a number of factors: the requirements for international financing favour foreign firms; some public providers are subsidized by the Government; and too many operators are present in the

market, some of which are not sufficiently experienced. The presence of a large number of suppliers in a rather small market leads to a race to offer services at the lowest possible price, with consequent problems of quality and security. Another concern is that local engineers and architects are not always adequately trained, and this jeopardizes their ability to export their services. The present procedure for approval of local firms to participate in public bids is in the process of being replaced by the establishment of "cahiers de charges", whereby the capacity and the expertise of each company to carry out specific projects are assessed. Thirty-five per cent of the turnover of Tunisian firms providing architectural and engineering services in the area of public works is generated by services provided from abroad. However, the export promotion agencies are not giving sufficient support to these firms, which have the capacity to export their services. On the other hand, these firms are not very familiar with the export-promotion activities available in the country. Tunisia has largely liberalized its domestic market for construction services. The only conditionalities applying to foreign direct investment (FDI) are that the Chief Executive Officers of companies must be citizens of Tunisia and that foreign capital should not exceed 50 per cent.

Experience of Turkey

50. The construction sector has acted as a push factor in the economy. To maintain the competitiveness and efficient functioning of the sector, emphasis is being placed on the importance of research and development (R&D) and the adoption of new technologies. At the same time, knowledge and experience are necessary inputs which should be supported through the system of education and continuous training. However, the public education system has not been providing formal training to workers. To fill that gap, private companies should establish funds and trusts to offer training in skills for which there is an immediate need. Policy measures should take into account the fact that the construction services sector is a welfare tool, and bureaucratic obstacles faced by contractors should therefore be removed in order to maximize the effective performance of the sector. In elaborating the policy approach, dialogue with the private sector should be maintained. To achieve those goals, six conditions need to be met. First, the construction sector should be treated like other major industries, since construction services providers function like other industrialists, i.e. they establish only a temporary commercial presence limited to the implementation of a project. Second, contractors should be regarded as partners by the Government. Governments often fail to understand the uniqueness of the construction sector. This sometimes becomes an obstacle in itself, especially in government-financed projects, which experience numerous bureaucratic delays. Complex taxation detracts from efficiency, but Governments are unwilling to reform the tax system for fear of losing revenue. Third, budget allocations should be made according to project implementation needs in order to avoid unnecessary delays and a consequent increase in costs. Fourth, payments should follow implementation of construction projects without delay and not be used as an implicit tool for borrowing. Fifth, transparency is needed in the rules and procedures for procurement so as to discourage preferential treatment of selected suppliers. Sixth, a special agency should be created to oversee the construction sector, since the present situation in which several agencies are

involved is not conducive to dealing with the complex problems that arise in the construction services sector.

Experience of the United Republic of Tanzania

51. Because of the capacity constraints of the local construction industry, the market is dominated by foreign service providers. The United Republic of Tanzania is a least developed country (LDC), and the construction services sector is facing capital constraints and lacks financial support from the Government. The problem is becoming more acute owing to the need to adapt to the use of information technology and to meet associated costs. Implementation of construction projects depends heavily on financial support from multilateral funding agencies, which impose pre-qualification conditions that cannot be met by local service providers. Construction services are dominated by small and medium-sized enterprises (SMEs), which are vital for creating employment and growth, and are often the only ones willing and able to undertake small scattered projects, especially in rural areas. However, in terms of market share, foreign service providers are dominant in 14 members of the Southern African Development Community, with a 70 per cent market share. Local companies need to adapt to the challenge of increased competition, which has to take place within the framework of adequate policy measures, including affirmative development targets for SMEs, so that construction firms can take advantage of liberalization and improve their own competitiveness. Business and managerial skills are lacking and investment in human skills and capacities is a primary objective. Awareness regarding WTO issues and dissemination of information to larger constituencies in the developing countries should be enhanced since this is a necessary condition for successfully implementing the present WTO obligations and participating effectively in the on-going negotiations. Regional trade in construction services should be promoted as well as movement of construction resources, firms and personnel. At the same time, the Government's accountability and respect for the rights of the stakeholders in the construction services sector should be strengthened. Liberalization is not possible in LDCs since indigenous human and technological capacities have to be developed first, supported by the gradual removal of protectionist measures and progressive application of international standards. The construction services sector is not an area of export interest for LDCs owing to supply-side constraints, to overcome which support from the international community is imperative.

Experience of Venezuela

52. Venezuela is the second largest energy producer in the Western hemisphere, and also the second largest consumer of services related to energy production, including physical construction services and engineering services. In 1980 there were only 25 engineering companies in Venezuela which had the capacity to develop medium-size projects costing between US$ 100 and 200 million. By 1992, Venezuela had 200 engineering companies with such a capacity, including 25 with the expertise to manage complex projects. These companies have been increasingly able to provide the local oil company, PEDEVESA, with the kind of construction services which it needs for its activities. At present, 90 per cent of PEDEVESA's requirements in the engineering sector are satisfied by local companies. This

situation is the result of a global strategy put in place by PEDEVESA to support the development of local capacity in all sectors needed by the company for its operations. In the engineering sector, PEDEVESA encouraged the development of capacity and expertise by local firms and promoted partnerships with those foreign firms that were willing to transfer technology, train personnel and share their design and project control systems with local firms. However, to make local engineering firms adequate business partners for PEDEVESA, many problems had to be addressed and solved, such as the inability of Venezuelan companies to deal with large and complex projects, their lack of financial leverage and the serious restrictions in the domestic banking system. Large projects were split into several "easy to handle" packages; joint ventures were implemented where human resources training was a central issue; and high standards were set in the areas of design, cost estimation, planning, construction and inspection. Venezuelan engineering companies that provide services to PEDEVESA have diversified their activities and are at present also active in other industrial sectors, such as hydroelectricity and petrochemicals. However, they are not yet key players in the international market for plant construction.

Experience of Zimbabwe

53. The construction sector is of strategic importance for Zimbabwe's development, since it accounted for 2.3 per cent of GDP in 1997, employs of 78,000 people and plays a role in the development of other sectors of the economy. The Government of Zimbabwe strongly supports competition in the construction services sector, recognizing in particular that competition in the domestic market tends to be a prerequisite for local firms to become stronger and eventually be able to operate overseas. Any foreign investment in the services sector could take a 70 per cent shareholding. In the initial period after independence, the sector received direct support from the State, but since the country started implementing in the 1990s structural adjustment programmes funded by the International Monetary Fund, national construction firms are no longer cushioned against competition and have to struggle to survive. However, the Government introduced in 1993 an affirmative action policy in favour of indigenous firms in relation to non-donor-funded projects in order to reserve a minimum market share for these companies and to promote subcontracting and technology transfer. As far as aid-funded projects are concerned, restrictive donor requirements practically exclude developing countries' firms and individual professionals from playing a meaningful role. Local companies can try to penetrate this market only by means of strategic alliances with developed countries' firms. Developing country exports are frustrated by limitations affecting the movement of natural persons, such as restrictions on visas and temporary residence permits, and the need to adhere to the practices established by national professional associations. Increased transparency in government procurement may improve developing countries' penetration of developed country markets. However, opening up government procurement to international tendering will further affect the local companies' chances of providing construction services. National policy frameworks should focus on creating an enabling environment for the competitiveness of local architectural, engineering and physical construction services providers. Joint ventures with foreign firms should be

encouraged; local firms, however, should play the role of real partners. Tax rebates could be considered for investments made by local firms for upgrading human and technical resources.

B. Presentations by other lead discussants

United Nations Conference on Trade and Development (UNCTAD)

54. There is an asymmetry between developed and developing countries in the construction services sector. Whereas firms from developed countries have since the early 1980s increased their control of the international market with a share currently exceeding 90 per cent, the position of developing countries has been worsening, their share having fallen from more than 15 per cent to less than 5 per cent. As the experience of some developing countries shows, construction firms that succeeded in entering the international market have benefited from experience acquired at home. This underscores the importance of giving indigenous firms increased possibilities to provide construction services. Strengthening domestic capacity is only a first step towards enhancing their participation in world trade. In addition, technology and financing affect the ability of developing countries to access the international market. Efforts should therefore be made to facilitate their access to foreign technology and international financing, including through a more explicit policy on the part of international and regional financial institutions to further promote the participation of engineering services firms in the provision of construction services for projects funded by them in developing countries. It should be emphasized that increasing the participation of developing countries in world trade implies acceptance by all trading partners of the movement of both skilled and unskilled labour across national borders. Without such movement, which is necessary for the delivery of most construction services, particularly physical construction, developing countries would be denied possibilities to fully exploit their low-labour-cost comparative advantage in the international market.

World Trade Organization (WTO)

55. Just over half of the Members of the WTO have made market access and national treatment commitments in the construction services sector, as a result of which it is the sixth most committed sector in the established list of 11 services sectors. Among those that undertook specific commitments, developed countries accounted for 24 schedules and developing countries for 64. A more detailed analysis revealed that WTO Members did not undertake any substantive obligations with regard to providing access for natural persons in construction services. On the other hand, 31 per cent of Members indicated that firms may establish a commercial presence without restrictions. The rest stated that certain conditions may be imposed in relation to firms' commercial presence. With regard to cross-border trade, Members regarded it as a less relevant or even technically impossible way of providing construction services. Architectural and engineering services were committed under the professional services category, which encompasses as separate subsectors architectural services (66 commitments), engineering services (73 commitments), integrated engineering services (45 commitments) and urban planning services (48 commitments). Among those,

developed countries made on average 25 commitments in all the professional services. The main difference as compared with the construction services sector was that commitments indicated the willingness of countries to open their markets to cross-border trade in architectural and engineering services, and half of the Members allowed this trade without restrictions. In the context of the present round of services negotiations, construction services would be affected by the discussions in the Committee on Specific Commitments on the scope of the sector, negotiations on government procurement in the Working Party on GATS rules and the Working Party on Domestic Regulation, and finally negotiations on specific commitments.

Organisation for Economic Co-operation and Development (OECD)

56. The supply of services in one sector depends on the availability, use and efficient functioning of a number of other services. The OECD views such a set of interdependent services as clusters of commercially related sectors. Services sectors have been introduced in the GATS along clear "vertical " lines — for example, health services, business services and transportation services — but there are also "horizontal" links between services sectors. These links are often commercial ones where restrictions on the supply of one service can prevent or curtail supply of another service. The basic idea behind clusters is to try to establish such links, and to establish a list or groups of related services. The obvious problem is that all services sectors are potentially related. If clusters are to have any meaning at all, they need to be kept manageable and focused. A cluster approach could complement, but not replace, request–offer negotiations on services. A cluster approach may not be appropriate for all, or even very many, sectors, and the type of cluster approach may vary according to the sector. There are a number of possible ways in which clusters could be used in negotiations, depending on what participants wanted. Options include a reference tool for domestic authorities when making requests and offers; agreement by WTO Members on the composition of cluster services in one or two areas and its inclusion in their requests and offers on an autonomous, voluntary basis; and the basis for a model schedule of sectors where Members might consider making commitments, but without prejudice to the type of commitments they might make. Nothing in clusters would necessarily override the basic GATS principle that Members choose the sorts of commitments they want to make and the sectors in which they want to make them. The flexibility built into the GATS enables Members to structure and tailor the type of commitments they make to suit their development and economic priorities. Construction services are infrastructure services and are among those that underlie the efficiency of the economy as a whole. As such, they are likely to be commercially relevant to a range of other service sectors, such as tourism and environmental services, and are thus likely to arise in the context of other proposed clusters.

C. Summary of the videoconference with the World Bank and the Inter-American Development Bank

57. The World Bank and the Inter-American Development Bank (IADB) highlighted the substantive changes in priorities in their lending programmes, in particular the new emphasis given to the funding of projects in the social sectors (health, education, environment and

poverty reduction). As a result of those changes, the allocation of funds to large civil works contracts for infrastructure development is decreasing, while the allocation of funds for small projects in the social sectors is increasing rapidly. The World Bank classifies as small contracts those involving less than US$ 2 million, whereas the IADB considers small contracts to be those involving between US$ 1 and 5 million, depending on the borrowing country. In recent years only 40 per cent of all World Bank financing has gone to large infrastructural facilities. In the case of the IADB, since the implementation of its new policy in 1994, 50 per cent of all financing has been allocated to social sectors and poverty reduction.

58. As a result of the new direction in lending for small projects, contracts are increasingly allocated through national competitive bidding applying national legislation. As required by institutional regulations, large contracts are allocated through competitive international bidding that must be open to all members of the Bank and follow mandatory procedures. In the case of small contracts, foreign firms cannot be excluded from participation, but because of the size of the contracts they are usually not interested in bidding. Therefore, a space has been opened for local construction and AES firms to receive most of the small contracts. The IADB has awarded 80 per cent of all contracts to local providers, and there is increasing participation by firms from developing countries in the region, especially Brazil, Mexico and Argentina.

59. The World Bank regulations include provisions for promoting local participation. A price preference of 7.5 per cent is granted to firms from the poorest countries (those with a per capita income of under US$ 650) in the operations of the International Development Agency, and a price preference of up to 50 per cent can be granted to locally produced goods, provided that there is at least 30 per cent of domestic value added. When the shortlist of five or six candidates for the contract is established, at least two of them must be from developing countries. However, data show that less than 1 per cent of all contracts was awarded to local firms under the price preference scheme. The IADB does not have any provisions for granting preference to local AES firms and physical construction providers. Neither the World Bank nor the IADB accepts any national provisions regarding mandatory joint ventures between foreign and domestic companies, or regarding any other performance requirements. However, any voluntary scheme would be compatible with their institutional regulations. The requirements incorporated in the bidding for World Bank-funded projects, including the pre-qualification requirements, curtail the participation of local firms. The World Bank recognized that pre-qualification requirements have occasionally been applied unrealistically and has been working towards correcting this problem. However, those local firms affected should contact it or its local representative immediately and set out their concerns. The IADB has followed a different approach where a pre-qualification criterion was set *ex ante* in the case of all projects.

60. Both the World Bank and the IADB confirmed that establishment of technical specifications and standards is the responsibility of national Governments. However, they provide recommendations and technical assistance when required. The World Bank is currently focusing its efforts on improving national government procurement systems in

order to increase transparency, as well as the quality and capacity of the national institutions involved. With the participation of the private sector, it has so far completed an overall analysis of the 50 national systems. Once the assessment has been finalized, in consultation with the Governments concerned it will establish programmes on how to upgrade national procurement systems and will provide the necessary financing. Its programmes on promoting the legislative reform of government procurement systems may have an impact on developing countries' commitments in the multilateral trading system, and on the negotiations on government procurement in the GATS.

61. Both the World Bank and the IADB recognized that institutional regulations override national legislation on lending activities in some cases and in competitive international bidding. However, the IADB stressed that all the legislation of its members incorporated provisions specifying that in the case of projects financed by the international financial institutions the provisions of those institutions will apply, and that there was therefore no conflict with national legislation. The requirements of the international financial institutions do not allow the pursuance of legitimate national development objectives through government procurement provisions in national legislation. Both Banks considered direct intervention to be a more efficient instrument for achieving national development objectives than preferences or performance requirements in the procurement legislation. Procurement policies should be neutral in terms of promoting development. Projects oriented to local supply capacity development should be established independently, and Governments may propose them for inclusion in annual programmes with the financial institutions.

III. ORGANIZATIONAL MATTERS

A. Convening of the Expert Meeting

62. In accordance with the decision of the Trade and Development Board at its twenty-fourth session, on 12 May 2000,[2] the Expert Meeting on National Experiences with Regulation and Liberalization: Examples in the Construction Services Sector and Its Contribution to the Development of Countries was held at the Palais des Nations, Geneva, from 23 to 25 October 2000. The meeting was opened on 23 October 2000 by Mr. John Cuddy, Director, Division on International Trade in Goods and Services, and Commodities.

B. Election of officers

(Agenda item 1)

63. At its opening meeting, the Expert Meeting elected the following officers to serve on its Bureau:

Chairperson: Mr. Werner Corrales Leal (Venezuela)

Vice-Chairperson-cum-Rapporteur: Mr. Nurul Hossain (Bangladesh)

C. Adoption of the agenda

(Agenda item 2)

64. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in document TD/B/COM.1/EM.12/1. Accordingly, the agenda of the Meeting was as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. National experiences with regulation and liberalization: examples in the construction services sector and its contribution to the development of developing countries

4. Adoption of the outcome of the Meeting

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[2] See Report of the Trade and Development Board on its twenty-fourth session (TD/B/EX(24)/3), paragraph 46 and annex III.

D. Documentation

65. For its consideration of the substantive agenda item (item 3), the Expert Meeting had before it a note by the UNCTAD secretariat entitled "Regulation and liberalization in the construction services sector and its contribution to the development of developing countries" (TD/B/COM.1/EM.12/2).

E. Adoption of the report

(Agenda item 4)

66. At its closing meeting, on 25 October 2000, the Expert Meeting authorized the Rapporteur to prepare the final report of the Meeting, under the authority of the Chairperson, to include the outcome adopted by the Meeting (see chapter I) and the Chairperson's summary of the informal discussions (see chapter II).

Annex

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the Meeting:

Angola
Australia
Bangladesh
Cameroon
Colombia
Costa Rica
Cuba
Czech Republic
Democratic People's Republic of Korea
Djibouti
Dominican Republic
Egypt
Ethiopia
France
Germany
Guatemala
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Japan
Lesotho
Madagascar
Mauritius
Mexico
Morocco
Netherlands
New Zealand
Pakistan
Paraguay
Peru
Philippines
Romania
Samoa
Saudi Arabia
Sierra Leone
Swaziland
Thailand
Tunisia
Turkey
United Republic of Tanzania
Venezuela
Zimbabwe

2. Palestine attended the Meeting as an observer.

3. The following intergovernmental organizations were represented at the Meeting:

Arab Labour Organization
League of Arab States
Organisation for Economic Co-operation and Development
Organization of African Unity
Organization of the Islamic Conference

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* For the list of participants, see TD/B/COM.1/EM.12/INF.1.

4. The following specialized agencies and related organizations were represented at the Meeting:

International Labour Organization
United Nations Industrial Development Organization
World Trade Organization

5. The following non-governmental organization was represented at the Meeting:

General Category

World Federation of the United Nations Association